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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/638,236	08/07/2003	Martinus C.M. Bakx	D-7875	4094
7590	02/08/2005			
			EXAMINER	
			FIDEI, DAVID	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/638,236	BAKX, MARTINUS C.M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David T. Fidei	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5-8 and 10-13 is/are rejected.
- 7) Claim(s) 4 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/15/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

***Election/Restrictions***

1. Applicant's election without traverse of Claims 1-13, the species of figures 1-4 in the reply filed on January 18, 2005 is acknowledged.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by DE document no. 37 11 322 C1. As to claim 1, figures 1 and 2 shown a wraparound article carrier for packaging an article, the carton comprising opposed top (3) and base walls (2) interconnected by opposed side walls (4, 5) thereby forming a tubular structure, wherein an aperture is provided in the base wall to accommodate a portion of the article, and wherein a bracing tab (16-19) is formed at least in part from the base wall to define the aperture and folded so as to form a spacer for causing the top and base walls to be spaced by a predetermined distance.

As to claim 2, the bracing tab (any one of 16-19) is hinged to a side wall (4, 5).

As to claim 5, the bracing tab extends to a portion of the article disposed adjacent the top wall, see figure 2.

As to claim 6, the bracing tab is so folded in the set up condition to form a spacer for causing the top and base wall panels to be spaced by a predetermined distance.

4. Claims 1-3 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by EP document no. 0 048 506. As to claim 1, figures 6 and 30 shown a wraparound article carrier for packaging an article, the carton comprising opposed top (64; 260) and base walls (60; 264) interconnected by opposed side walls (62, 66; 252, 264) thereby forming a tubular structure, wherein an aperture is provided in the base wall to accommodate a portion of the article, and

wherein a bracing tab (72; 272, 274) is formed at least in part from the base wall to define the aperture and folded so as to form a spacer for causing the top and base walls to be spaced by a predetermined distance.

As to claim 2, the bracing tab (72; 272, 274) is hinged to a side wall (any one of 62, 66; 252, 264).

As to claim 3, in the embodiment of figure 30 said one side wall comprises a securing flap (266) and a side panel (256), said securing flap (266) being hingedly connected to the base wall along a first fold line (256) and extending toward the top wall to a free edge of the securing flap, said side panel (256) being connected to the top wall and secured to said securing flap, said bracing tab being formed in part from said securing flap and hingedly connected to the securing flap along a second fold line (not number, but co-extensive with fold line 256).

As to claim 5, the bracing tab extends to a portion of the article disposed adjacent the top wall, see figures 7 and 30.

As to claim 6, the bracing tab is so folded in the set up condition to form a spacer for causing the top and base wall panels to be spaced by a predetermined distance.

As to claim 7, a securing flap (266) in figure 30 is hingedly connected to the base wall (264) along the base wall fold line (256) with bracing tab being formed in part from said securing flap and hingedly connected to the securing flap along a second fold line (not number, but co-extensive with fold line 256) similar to claim 3.

As to claim 8, the bracing tab is sized extend to a portion of the article disposed adjacent the top wall, see figure 30.

5. Claims 1 and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated DE document 3321036 A1.

As to claim 1, figures 1 discloses a wraparound article carrier for packaging an article, the carton comprising opposed top (2) and base walls (3) interconnected by opposed side walls (4) thereby forming a tubular structure, wherein an aperture (11) is provided in the base wall to accommodate a portion of the article, and wherein a bracing tab (16) is formed at least in part

from the base wall to define the aperture and folded so as to form a spacer for causing the top and base walls to be spaced by a predetermined distance.

As to claim 10, a wraparound article carrier is shown in figure 1 for packaging an article, the carton comprising opposed top (2) and base walls (3) interconnected by first and second side walls (4, 4) so as to form a tubular structure, and an aperture (11) provided in the base wall so as to receive a protruding portion of the article (17), wherein the aperture extends into a panel (6) adjacent the base wall so as to facilitate the folding of the base wall panel over the protruding portion during construction of the carton.

As to claim 11, the panel (6) is considered a securing flap arranged to secure the base (3) to one of the first or second side wall (4) as shown in figure 1.

As to claim 12, the securing flap (6) is disposed on the inside surface of the surface of side wall (4) so that a portion of the aperture in the securing flap is covered by the one side wall (4).

As to claim 13, a blank in figure 2 for forming a wraparound article carrier comprises in series a securing flap (6), a base wall panel (3), a first side wall panel (4), a top wall panel (2), and a second side wall panel (4), wherein an aperture (11) is formed at least in part from the base wall panel (3) so as to receive an article in use, wherein the aperture extends into a securing flap (6) so as to facilitate the folding of the base wall panel over the article during the folding of the blank to form a carton

#### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 2 "said one side wall" has no antecedent basis. Opposed side

walls are recited in claim 1 and it is not clear what said one side wall refers to. In claim 12, the one side wall also has no antecedent basis.

***Allowable Subject Matter***

8. Claims 4 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION***

9. "In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant 's or patent owner 's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)", see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner 's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei  
Primary Examiner  
Art Unit 3728

dft  
February 4, 2005